

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 23-7 (DSD/JFD)

UNITED STATES OF AMERICA,

Plaintiff,

**GOVERNMENT’S MOTION
FOR PROTECTIVE ORDER**

v.

RIVER WILLIAM SMITH,

Defendant.

The United States of America, by and through its attorneys, Andrew M. Luger, United States Attorney for the District of Minnesota, and Manda M. Sertich, Assistant United States Attorney, hereby moves the Court for an order protecting the distribution of Rule 16 and other discovery material in this criminal case pursuant to Rule 16(d)(1) of the Federal Rules of Criminal Procedure.

BACKGROUND INFORMATION

In support of its motion, the United States alleges and states the following:

1. Defendant River William Smith is charged by Indictment with Unlawful Possession of a Machine Gun and Attempted Receipt or Possession of Firearm Not Registered in the National Firearms Registration and Transfer Record. Defendant was originally charged by Complaint on December 14, 2022. The allegations set forth in the Complaint Affidavit outline the use of two FBI Confidential Human Sources (“CHS-1” and “CHS-2”). CHS-1 communicated with Defendant online, and CHS-2 communicated with Defendant in text communications and in person, resulting in written communications and audio recordings of communications. CHS-2 also participated in an audio-recorded

controlled delivery with Defendant during the course of the FBI's investigation. The Government believes that disclosure of communications and reports related to the activities of CHS-1 and CHS-2 will be beneficial to the administration of justice in this case. Given the highly sensitive nature of the identity of CHS-1 and CHS-2, a Protective Order governing these disclosures is necessary.

2. Initial Rule 16 disclosures in this matter are due on January 20, 2023, and the Government is prepared to begin providing materials via electronic discovery to the defense. The defense has agreed to comply with the terms of the proposed Protective Order until the Court enters an order. While materials have been redacted to protect the identifying information of CHS-1 and CHS-2, CHS-2 is effectively identified due to audio recordings of interactions between CHS-2 and Defendant, and Defendant's knowledge of CHS-2's appearance.

3. The undersigned has conferred with Counsel for Defendant, Jordan Kushner, and Mr. Kushner does not object to the proposed Protective Order. The proposed Protective Order will be sent to the Court via email.

ARGUMENT

The Court has inherent power to control its own records. This general power has been reaffirmed by the United States Supreme Court:

It is uncontested, however, that the right to inspect and copy judicial records is not absolute. Every court has supervisory power over some records and files and access has been denied where court files might have become a vehicle for improper purposes.

Nixon v. Warner Commc 'ns, Inc., 435 U.S. 589, 598 (1978).

Based upon the information contained in this motion for a protective order and the Complaint affidavit itself, the Government has shown good cause to warrant a protective order limiting dissemination of the discovery provided. As set forth in this motion, the interactions between Defendant and CHS-2 contain sensitive information. Restricting the dissemination of this discovery is intended to protect the identity and safety of CHS-2.

Prohibiting the dissemination of the discovery to Defendant will not unduly hamper the defendant's preparation for trial. Actual physical possession of the discovery by Defendant—outside of the processes set forth in the proposed Protective Order—is not necessary to mount a vigorous defense at trial or subsequent proceedings. Additionally, as noted above, counsel for Defendant does not object to the terms contained in the proposed Protective Order.

Thus, the Governments respectfully asks the Court to GRANT its Motion and issue an Order consistent with the attached proposed Protective Order.

Dated: January 20, 2023

Respectfully submitted,

ANDREW M. LUGER
United States Attorney

/s/ Manda M. Sertich

BY: MANDA M. SERTICH
Assistant U.S. Attorney
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